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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,741	05/01/2001	Samuel T. Henderson	ACC.01	3451

25871 7590 11/26/2002

SWANSON & BRATSCUN L.L.C.  
1745 SHEA CENTER DRIVE  
SUITE 330  
HIGHLANDS RANCH, CO 80129

EXAMINER

BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/845,741

Applicant(s)

HENDERSON, SAMUEL T.

Examiner

Mojdeh Bahar

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) g.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's response to the first office action of February 26, 2002 and amendment submitted February 11, 2002 (Paper No. 7) is acknowledged.

Claims 1-4, 7 and 11 are herein examined on the merits.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mak et al. and Veech (USPN 6,316,038).

Mak et al. teaches that ketogenic diets are known to improve cognitive functioning, see abstract.

Veech (USPN 6,316,038) teaches a method for treating Alzheimer's disease and its symptoms and manifestations, including dementia, employing a ketogenic (medium chain triglycerides) diet, see col. 3, lines 21-59 in particular. Veech (USPN 6,316,038) teaches an example of a ketogenic diet wherein at each of the three meals the patient consumes 48-50 g of fat, see particularly col. 10, lines 56-67. Veech (USPN 6,316,038) further teaches that increase of ketone bodies is effective in the treatment of Alzheimer's disease, see particularly col.5, lines 11-29. Veech also teaches that both oral and parenteral administration of triglycerides can increase blood ketones, see col. 9 lines 62-65, see also col. 20, lines 16-23.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ medium chain triglycerides in a method of treating Alzheimer's disease and dementia associated therewith.

One of ordinary skill in the art would have been motivated to employ medium chain triglycerides in a method of treating Alzheimer's disease and dementia associated therewith because medium chain triglycerides are known to increase the level of ketone bodies in the blood and the increase of ketone bodies in the blood is known to be useful in treating Alzheimer's disease. Therefore one of ordinary skill in the art would be motivated to increase ketone bodies in order to treat Alzheimer's.

***Response to Arguments***

Applicant's arguments filed February 11, 2202 have been fully considered but they are not persuasive. Applicant argues that the prior art references teach ketogenic diets whereas the claims herein teach the administration of MCT outside of the context of a ketogenic diet. Applicant also argues that in providing that triglycerides can only be administered in a diet of low protein and carbohydrate, the prior art references teach away from the instant invention, Note that the claims herein are inclusive of ketogenic diets and do not exclude the dietary regimens taught by the prior art cited herein.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

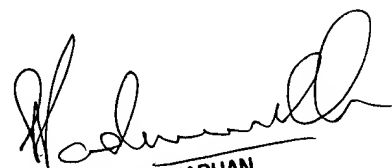
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from Monday to Friday from 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar  
Patent Examiner  
November 19, 2002

  
SREENI PADMANABHAN  
PRIMARY EXAMINER 11/20/02